

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

I.T.R. No. 173 of 1989

Date of decision: 14.2.2007

The Commissioner of Income-Tax (Central), Ludhaina ...Petitioner

Versus

Shri Parkash Chand Jain, Patiala

...Respondent

**CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE RAJESH BINDAL**

Present: Mr.Yogesh Putney, Advocate for the Revenue.

RAJESH BINDAL, J.

The Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short , 'the Tribunal) has referred under Section 256(1) of the Income Tax Act, 1961 the following question of law which emerges from its order dated 30.10.1981 in ITA No.440/Chandi/80 for the assessment year 1975-76:-

“Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that there was no “transfer” of any asset within the meaning of Section 2(47) of the I.T.Act, 1961 and deleting the addition of Rs. 19,170/- in respect of Capital Gains arose to the assessee?”

Briefly the facts, as noticed in the statement of the case are that the assessee contributed a piece of land as his share capital in a firm styled as M/s Solvent Oil Works, which came into existence with effect from 1.3.1974 vide partnership deed dated March 8, 1974. The assessee's account was credited with an amount of Rs. 36,000/- representing the value of the land contributed by him.

The issue involved is as to whether difference in the cost price of land assessed and the amount credited as capital introduced by the

partners in the firm on account of land contributed to the firm would amount to transfer exigible to levy of capital gain tax.

After hearing learned counsel for the revenue, we do not find any substance in the case. In **N. Kadhervali Saheb and another (Decd. by L.Rs.) Vs. N.Gudu Sahib (Decd.) and others (2003) 261 ITR 1**, Hon'ble the Supreme Court has categorically held that partnership is nothing else but a compendium of partners. Property owned by the firm is owned by the partners. Keeping this in view it cannot possible be held that there is any transfer of land by the partners to the firm, which would entail levy of capital gain tax.

In view of the our above discussions, the question referred is answered against the revenue and in favour of the assessee.

The reference is disposed of accordingly.

(Rajesh Bindal)
Judge

Feburary 14,2007
Pka

(M.M.Kumar)
Judge